Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matters of Public Notice. Regarding AMTRAK Request for Waiver of Certain Part 80 AMTS Rules "To Implement PTC"	 DA 11-322 WT Docket No. 11-27

To the Chief, Wireless Telecommunications Bureau

Comments

including

Petition for Reconsideration

And

Motion to Dismiss

"Petitioners," the undersigned entities, request reconsideration and termination of the captioned docket regarding the above-noted "waiver" request of AMTRAK. For the same reasons, Petitioners request dismissal of the subject AMTRAK waiver request. Petitioners also submit other Comments herein.

There are issues the FCC should deal with regarding railroad and broader Intelligent Transportation Systems, but any narrow issue as AMTRK presents is at best misleading in that it cannot be understood properly outside an broader strategic national ITS framework. In addition, the AMTRAK request is not what it appears, based on written documentation the undersigned has with AMTRAK and third parties. However, this pleading focuses on procedural and equitable defects.

Regarding the status of PTC, see: http://strategicrailroading.com/2011/02/ptc-caveat-emptor/ . It is not what AMTRAK suggests.

Also, since Petitioners assert that the communications between AMTRAK and FCC staff, noted below, involve violation of ex parte rules, Petitioners are copying the FCC General

Counsel.

Introduction and Reference and Incorporation

Petitioners hold the majority of the AMTS B block geographic spectrum in the nation, a major quantity of AMTS A block geographic spectrum in the nation, and other spectrum licenses. Petitioners FCC licenses and related plans and actions are summarily noted in the Exhibit 1 below, along with the their position as to the highest and best us of AMTS in the nation, which is not primarily for use by passenger or other railroads for moving train use, including Positive Train Control, or other railroad purposes.

In this docket, Petitioners previously submitted a filing which, for the most part, is

reflected in this filing: It is not clear under FCC rules (which are not well formed or evenly applied) what is permitted or other wise processed by practice in a docket such as this, apart form Comments and Reply Comments: Thus Petitioners submit the information in this filing Comments. However, they do not withdraw the noted previous filing, including since that previous filing contained attached materials that is also referenced herein, which is not again attached hereto.

Petitioners reference and incorporate herein the relevant materials (which are clear by their labeling and content) to the topics of the PN and this filing, from other records currently publicly before the FCC and easily accessible to FCC staff, AMTRAK, and all participants in this docket, as follows: All Petitioner filings including exhibits and referenced materials (including Internet links) in WT Docket No. 10-83 that pertains to the Southern California Railroad Authority seeking AMTS spectrum allegedly for Positive Train Control and for that purpose various FCC Part 80 rule waivers.[1] This WT Docket is on the FCC ECFS system.

[1] Since the AMTRAK waiver request is materially the same in key aspects, this reference and incorporation is efficient and also is soundly within common FCC and court practice and precedent. See, e.g., *In re: Entercom Portland License, LLC, DA 08-495*, Rel. March 4, 2008; *In the Matter of Communications TeleSystems International Application...MO&O, DA 96-2183,* 11 FCC Rcd 17471; 1996 FCC LEXIS 7206, Rel. Dec. 31, 1996; Artis v Bernake, 630 F.3d 1031; 2011 U.S. App. LEXIS 519; 111 Fair Empl. Prac. Cas. (BNA) 300; 94 Empl. Prac. Dec. (CCH) P44,078, Decided January 11, 2011.

This PN Can Be Petitioned for Reconsideration

A party can petition for reconsideration FCC action under a Public Notice under 47 USC §405 and 47 CFR §1.106. See, for example: *In the Matter of Paging Systems, Inc. Petition for Reconsideration of Public Notice Announcing Procedures for Auction of Automated Maritime Telecommunications System Licenses* (Auction 61), DA 10-1242, *Order on Reconsideration*, 25 FCC Rcd 8476; 2010 FCC LEXIS 4027; 50 Comm. Reg. (P & F) 1197, July 1, 2010 Released, and *In the Matter of MetroPCS Communications, Inc., Petition for Reconsideration of Public Notice Announcing Procedures for Auction of AWS-1 and Broadband PCS Licenses* (Auction 78), AU Docket No. 08-46 , DA 10-376, *Order on Reconsideration*, 25 FCC Rcd 2209; 2010 FCC LEXIS 1440; 49 Comm. Reg. (P & F) 851, March 4, 2010 Released.

Petitioners have standing to file this petition since they hold AMTS spectrum nationwide and any substantive action on the subject AMTRAK "waiver" request could affect their rights as co-channel and adjacent-channel spectrum holders, as discussed in Petitioners' presentations in the MCLM assignment of AMTS spectrum to SCRAA, including in the proceeding on that in WT Docket No. 10-83 (the "SCRRA Materials").

In addition, Petitioners have standing since AMTRAK is (only)[2] interested in AMTS spectrum of licensees other than Petitioners (held by Maritime Communications Land Mobile LLC ["MCLM"] and/ or Paging Systems, Inc. ["PSI"]) based on direct information AMTRAK provided to Petitioners in writing (that Petitioners did not agree to keep confidential), all of which Petitioners are challenging before the FCC.

[2] AMTRAK required that, to consider any proposal from Petitioners (even ones made that afforded AMTS spectrum, some at no cost or on nonprofit basis) that they give up claims they had pending before the FCC as to facts and law concerning violations by MCLM of the Communications Act and FCC rules. Petitioners rejected that as an unacceptable, overreaching business practice, as potentially a violation of applicable acquisition regulations, and as contrary to the public interest as construed under the Communications Act. This is part of the misleading nature of the AMTRAK "waiver" request.

AMTRAK Lacks Standing

AMTRAK lacks standing to seek, or have granted, any rule waiver under 47 CFR §1.925 or other basis (or declaratory ruling under 47 CFR §1.2 or other basis, if the subject waiver requires are morphed into this category) regarding licenses it does not hold and for which is has no pending application to obtain. In *City of Olmstead v. FA*A, 292 F.3d 261, the DC Circuit court cited an earlier, FCC case applicable here (underlining added):

> Second, in *Suncom Mobile & Data, Inc. v. FC*C, 318 U.S. App. D.C. 377, 87 F.3d 1386 (D.C. Cir. 1996), Petitioners held that a prospective applicant for a 220 MHz transmission network license lacked Article III standing to challenge the FCC's (1) denial of its request for a declaration that its envisioned network qualified for a regulatory exemption from the FCC rule proscribing ownership of multiple 220 MHz licenses for service in a single 40-mile area and (2) denial of its request for a waiver of the customary eight-month construction deadline:
>
> SunCom alleged no actual, existing interest in the licenses for which it made the two requests nor even a contract to acquire such but only an intent to purchase unidentified licenses sometime in the future, after FCC approval and station construction. Based on the allegations before the Commission, Petitioners see no likelihood that SunCom stood to suffer the kind of concrete, probable harm from the Commission's denials that Article III requires.

As with the case with SunCom, AMTRAK lacks standing in this case, both if this matter Petitionersre to go to court, under Article III standing, and under agency standing criteria which is on the same basis (by case precedent and since final agency actions are appealable to court under 47 USC 402).[3]

The Bureau Lacks Authority

The Bureau lacks authority to take action in this matter, including the subject Public Notice and docket establishment. FCC rule § 0.131(a) does not vest authority in the Bureau to act upon so-called rule waivers for a party that is not subject to the rules. This section authorizes

[3] See also: *Public Citizen v. Lockheed Aircraft Corp*., 565 F.2d 708, 717-19 (D.C.Cir.1977): economic injury claimed was "too speculative" where association claimed only that its members Petitionersre interested in purchasing some of the property.

action on rule waivers but only under the purpose stated: "acts ... under delegated authority, in all matters pertaining to the licensing and regulation of wireless telecommunications.... acting on rule waivers...." AMTRAK is not subject to any licensing or regulation regarding any AMTS spectrum, and thus the Bureau has no delegated authority to act on its "waiver" requests. This is not a notice on inquiry on a broad topic such as what is appropriate spectrum and wireless tech and systems for railroads (that would be a good public debate and proceeding), but a licensing waiver action, and there is no authority for it, since there is no licenses involved.

If a person not known to the FCC (of with little "clout") told the FCC it wants waivers to use Verizon's CMRS licenses that it may buy out in the future, the FCC obviously would and should summarily reject it and not waste resources. The Bureau cannot entertain this AMTRAK request, even though AMTRAK is well known, first since it lacks delegated authority to do so, but also since if it does, it opens the door to many other speculative requests of this sort, which would waste the public resource of FCC staff time and procedural resources, and potential court challenges, etc.

Ex Parte Rule Violations

The Communications between FCC staff and AMTRAK leading to the subject waiver requests, PN and docket are impermissible ex parte communications.

Those communications, if written, had to be but were not served upon Petitioners. To the extent they were oral, the required process of notification and opportunity to participate was not followed. Petitioners involved are those which hold AMTS spectrum that could be subject to what the PN indicates is the ultimate *direct* purpose of the subject waiver request: Skybridge Spectrum Foundation, Environmentel LLC, and Intelligent Transportation & Monitoring Wireless LLC, and the obvious indirect Trojan-Horse purpose of getting FCC approval to change AMTS for railroad PTC even when the subject spectrum is under serious FCC investigations for

disqualifying action by the licensees: a way to get FCC signals that it will launder the defects for US railroads if they assert enough pressure.[4] The other Petitioners are also involved for reasons made clear in all of the Petitioners pending challenges to the MCLM and PSI AMTS licenses that are the subject of the subject waiver requests.

Contrary to the PN indications, this is not a simple request by AMTRAK to grant it waivers it may or may not ever use. As noted above, AMTRAK specifically decided, in communications with Petitioners, to limit their acquisition actions for AMTS to non-Petitioners spectrum. Petitioners also obtained in the public domain a copy of the MCLM proposal to AMTRAK to sell AMTS geographic and site-based AMTS to AMTRK that had false representations, that violated Petitioners rights under FCC rules including §§ 80.385(b) and (c) (among other rules), and that is based upon many violations of FCC and other law which Petitioners outlined to AMTRAK and that is clear in pleadings filed upon said MCLM AMTS spectrum licenses on ULS. See also Petitioners' Section 1.65 Report filed under those licenses earlier this week, regarding litigation in US District Court. AMTRAK and its counsel were provided copies.

The subject waiver request and PN were necessarily based upon communications between AMTRAK and FCC staff in which AMTRAK was taking the position, directly or indirectly, that said other-party AMTS site-based and geographic spectrum (of MCLM and perhaps PSI also) is valid and is what AMTRAK may buy and seek FCC assignment approval, if the waivers are granted. That involves impermissible "presentations" to the FCC since as noted above Petitioners have pending restricted proceedings that issue of validity and assignability.

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[4] This is the latest in a serious of such attempts by MCLM and its prospective AMTS spectrum assignees. All such attempts are described in oppositions and other pleadings filed by Petitioners copies of which are under the subject MCLM AMTS licenses.

Equitable and Other Matters

In relation to but also apart from the ex parte rule violation issues, these communications with AMTRAK and FCC staff, the PN and the Docket are unfair and unequal and discriminatory application of Bureau resources. For example (several out of dozens of like examples clear in FCC records): Petitioners are stating below facts as to FCC lack of actions, not making any argument or request for action or information in the below matters:[5]

- AMTRAK alleges to need AMTS for Positive Train Control, which is considered an "Intelligent Transportation Systems" application, and seeks waivers when it has not standing to do that, and the Bureau has no authority to act upon that. Yet that was put on PN quickly, based upon my direct knowledge of AMTRAK involvement in AMTS spectrum that Petitioners can testify to as needed in relevant FCC and court proceedings.

- That will require time of Petitioners to respond, for like reasons Petitioners responded to the Mobility Division's placing on public notice the SCRAA-MCLM assignment and waiver matters, including since Petitioners have claims to and/or against all of the AMTS spectrum to which the AMTRAK waiver requests applies. Petitioners have claims to all of the MCLM geographic spectrum since Petitioners the lawful high bidders for it in Auction 61, and in the AMTS North Atlantic license area, Petitioners hold (depending on the sub-areas) either both the A and B block, or the B block, and Petitioners hold the B block in the AMTS Mid Atlantic license area from Auction 57, and these geographic licensees have claims to all of the site-based licenses spectrum based on automatic termination for various reasons, including lack of required construction, coverage and permanent operation, as provided in 47 CFR §80.385(c).

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[5] In any case, regarding ex parte issues, Petitioners copy MCLM and PSI which whose licenses are involved in the matter noted below regarding AMTS since in this filing Petitioners comment adversely upon their AMTS licenses. The matter noted regarding M-LMS is noted on a FCC delay basis only.

- It is clear from statements Petitioners have from various companies involved in railroads, which the FCC is familiar with (since these or some of these are in public proceedings), and from information Petitioners have from and in relation to direct dealings with AMTRAK, that MCLM, its spectrum-sale agents, and railroads (and Petitioners believe PSI also, on evidence and belief), seek to have the FCC provide extraordinary and unlawful relief for the railroads to "occupy" (as some railroads have put it) the AMTS band for asserted PTC public safety reasons and short-circuit applicable law in properly deciding up the claims of my companies to the MCLM and PSI AMTS spectrum, and also short-circuit the FCC's investigations of MCLM indicated herein. This AMTRAK waiver request that has no procedural justification is one more attempt by in this regard, and it is wasteful of FCC resources (if used lawfully in the public interest) and unlawfully damaging to my companies to have to defend, once more, Petitioners' well-founded claims.

In contrast to the above-noted FCC prompt service to AMTRAK, where AMTRAK has no spectrum at all for obtaining that service, and which will take up resources of my companies, and re-hash essentially the same matter as in the proceeding on MCLM-SCRAA (including the waivers involved)--

- Petitioners have had pending, *since year 2003*, a matter dealing with the entire M-LMS Intelligent Transportation Systems ("ITS") Radio Service nationwide. See RM-10403 which led to NPRM 06-49. Petitioners have presented scores of in-person and written presentations, including support from ITS trade organizations, two major ITS research institutes under State of California agency, and various PhD experts, defending the Commission rules for M-LMS (which includes accommodation of Part 15 use). Our companies Telesaurus Holdings GB LLC and Skybridge Spectrum Foundation hold most all of the M-LMS A block (5.75 MHz total) in the nation.

- Regarding AMTS, where the requesting party does have standing: (a) The FCC Wireless and Enforcement Bureaus investigation of MCLM is based upon (cited facts directly from, and raised questions based on those) my companies pending petitions under 47 USC §405 but those petitions Petitioners not granted. Our petitions have been pending since 2005. Our companies also presented the following, with regard primarily to AMTS spectrum, also with no resolution by the FCC (in this case, no action at all) October 14, 2009.

- The PN cites public law, but there is nothing is said law directing or suggesting that AMTRAK obtain AMTS spectrum. There is no reason based on current radio and computer technology that AMTRAK has to have spectrum adjacent to what the freight railroads decided to buy, 220 MHz, even apart from "PTC" uses.

- Also, Skybridge, one of the Petitioners, has pending before AMTRAK a FOIA request which AMTRAK to date denied in full. See attachment hereto. In addition, one or several Petitioners will be submitting an FOIA request to the FCC for documents relevant to the matters of this email. Petitioners have a pending case in US District Court against the FCC for unlawful FOIA denials- withholdings related to AMTS spectrum subject to the matters of this email. With regard to the Federal Railroad Authority, it also unlawfully acted in response to Skybridge's request for records dealing with AMTRAK PTC and FCC-spectrum matters including AMTS. Thus, the three most relevant Federal agencies (Petitioners include AMTRAK in this regard, as some courts have for FOIA and other purposes) each have delayed in and violated basic FOIA disclosure requirements, and this shows prejudice and intent to act for private party benefits. They all act as if Congress other authority has provided definitions or preferences regarding PTC with regard to radio spectrum involved and associated radio equipment and systems components, but that is false. For example, see Petitioners filings in the above-noted SCRAA docket and the following: http://strategicrailroading.com/2011/02/ptc-caveat-emptor/

As noted above, we attach here to an exchange regarding AMTRAK failure to produce documents required under FOIA. We also attach hereto an email from Petitioners to counsel to AMTRA in this proceeding. AMTRAK did not respond to Petitioners suggestion to discuss issues. Prior to that, AMTRAK staff also refused to discuss issues indicated above. (Neither did SCRAA counsel or its staff, when Petitioners likewise sought discussion on like issues.) Petitioners approach is constructive but not superficial. It is indicated here: http://www.scribd.com/doc/47831900/Skybridge-217-222-MHz-Plus-for-Government-PTC-Smart-Infrastructure [6]

As stated at the start of this pleading, there IS a need for a FCC docket on the broad issues of railroad and other ITS, but narrow proceedings with hidden agendas and misleading filings is contrary to the public interest of US ITS and the Communications Act.

Prejudice to Small Businesses

The PN and this Docket are prejudicial to Petitioners and other small businesses affected. This is illustrated in the section above on equitable matters. The FCC treats large companies with more influence at the FCC by one standard—here, granting them a special docket where they clearly have no standing for any relief, to consider that relief—but treats Petitioners by an entirely different standard—even where they obtained at FCC hundreds of licenses nationwide for Intelligent Transportation Systems ("ITS"), donated a large portion of them and cash to a nonprofit solely to assist government in ITS, and are attempting to carry that out, the FCC effectively suspends most of their licensed spectrum (in the M-LMS service) for eight years, and takes many other actions not supported under law that drag on for years.

AMTRAK Does Not Seek AMTS Spectrum Use

As described above, AMTRAK does not seek AMTS Spectrum Use generally as its

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[6] Petitioners wireless spectrum and business is described in papers here: *www.scribd.com/warren_havens/shelf*

waiver request reads, it seeks only spectrum from one company that alleges to hold valid AMTS licenses. That is contrary to federal law on acquisitions by federal agencies and agencies owned or controlled by the United States. The evidence in the SCRRA docket cited above, which as noted above is referenced and incorporated herein, shows that certain US freight railroad interests that have obtained 220 MHz spectrum, are behind some passenger railroad entities seeking AMTS spectrum, allegedly for PTC. AMTRAK lacks candor in its waiver request for failure to explain its actual intent and position.

AMTRAK's Bald Assertions Fail Waiver, and PN, Criteria

AMTRAK does not demonstrate the use need, technical means, interference studies required, or other good cause for the rule waivers it seeks. Among the technical defects are lack of demonstration. Among the need defects are showing its current inventory of FCC licensed spectrum, how that is being used, the shortage it alleges, and why for the alleged PTC need it needs AMTS spectrum in a certain amount, etc. and why it cannot use SDR and Cognitive Radio to use multiple bands for a more spectrum efficient and otherwise superior wireless systems that can, among other applications, support PTC including with regard to interoperability with other railroads sharing some of the tracks AMTRAK uses.

PTC is not Defined by Spectrum, and Other PTC Myths

See the SCRAA Materials. This is easy to comprehend by review of these SCRAA Materials and the sources cited therein.

PTC 220 MHz Equipment Reportedly Not Available as AMTRAK Indicates

Petitioners recently received from SCRAA under the California Open Records Act certain alleged due diligence materials that state that the PTC equipment that is in the range of 220 MHz cannot operate through the AMTS band. We are investigating this. We have legal review to determine if this was properly or inadvertently releases and if we have a right to

publicly use it. We have several times directly inquired of the PTC 220 LLC company called Meteorcomm LLC that is producing this equipment, but they refuse to discuss the matter and informed us that they will not be able to sell any equipment to us. That is directly contrary to their public marketing, and thus objectionable under US fair competition law.

Conclusion

For reasons given above, the above-captioned docket should be terminated and the subject AMTRAK waiver request should be dismissed. If the FCC does not take said action, then the AMTRAK waiver request should be denied with prejudice: having taken FCC staff and parties' time and resources in this matter once, it should not be permitted another attempt. Intelligent Transportation in the nation cannot be achieved by lack of candor, abuse of process, and other unintelligent, wasteful and prejudicial means as AMTRAK employs here, described above.

[Execution on next page.]

Respectfully submitted, March 11, 2011,

Warren C. Havens
President of each Petitioner listed below

Skybridge Spectrum Foundation
ATLIS Wireless LLC
V2G LLC
Environmentel LLC
Verde Systems LLC
Telesaurus Holdings GB LLC
Intelligent Transportation & Monitoring Wireless LLC

Berkeley California
www.scribd.com/warren_havens/shelf

510 841 2220 x 30
510 740 3412 - fax

Exhibit

Description of Petitioners' and AMTS Best Use

Including Petitioners' AMTS-Licenses and AMTS Applications for Critical Public-Interest Wireless for Land and Maritime Transportation, and Related

Petitioners hold AMTS geographic spectrum nearly nationwide that is, of course, fully listed under their names on ULS. The page immediately following this Appendix's text is a map depicting their AMTS licenses.

This purpose of this Appendix is to summarily describe Petitioners and their major plans and actions, and why their AMTS is essential for public interest wireless, and thereby further explaining (augmenting the Petition's main text) why the Petition should be granted.

AMTS is a mobile service, created for unique multi-site, full-waterway continuity of coverage and automatic services. It is in the VHF band (which extends up to 300 MHz) and is ideal for long-range mobile coverage. It can also be used for land services. *It is a waste to use AMTS spectrum primarily for fixed land services* (including utility "smart grid" and other telemetry),[7] since those can be performed very well with much higher spectrum for well-known reasons (the end points are known and can be configured for good paths, typically LOS; and higher gain antennas can be used; and less overhead is needed due to less demanding mobile environment, etc.). There is ample higher spectrum for fixed wireless, but there is very little spectrum below the 225-400 MHz military-only band for the services Petitioners plan, described herein—which is the highest and best use of AMTS.

Petitioners also hold licenses nationwide in the 220 MHz, Part 22 "Paging" (from Auction 87), M-LMS, MAS and VPC services. See:

http://www.scribd.com/PTC-Positive-Train-Control-220-MHz-217-222-MHz-Plus-for-Government-Trains-Smart-Infrastructure-Skybridge-Spectrum-Foundation/d/45303607

http://www.scribd.com/doc/36614169/Sky-Tel-Atlis-900-200-40-MHz-for-Smart-Transport-Energy-Environment-V3-9-10-Public

The LLCs Petitioners are majority owned by Warren Havens of Berkeley California, who serves as their President. They have different other owners and financing, FCC licenses, and other differences, but cooperate as described herein.

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[7] Also railroad wireless, including for "Positive Train Control" is closer to fixed wireless in ease of coverage, than road-way and peripatetic land mobile wireless, since railroad wireless generally involves coverage along flat or low-grade wide railroad corridors, antennas on relative high train vehicles, ample power, and higher-gain bi-directional base station antennas. For example, GMS-R and TETRA which provide train wireless in Europe and most of the rest of the world outside of North America use 800-900 MHz spectrum, including in less populated areas for high-capacity services for operation of the trains. Coverage is ample due to the reasons just noted.

Petitioners' nationwide integrated wireless plans for use of their respective FCC licensed spectrum are lead by Skybridge Spectrum Foundation ("Skybridge"). These plans are substantially described in various documents (and document "collections" summaries) at this link:[8]

http://www.scribd.com/warren_havens/shelf.

Skybridge, commenced in 2007, is a nonprofit corporation recognized by the IRS under Section IRC § 501(c)(3) supported by outright charitable donation of FCC spectrum, cash, personnel and other support by the other Petitioners, who do not accept any return consideration.[9]

Skybridge and these supporting other Petitioners (together called "SkyTel" in the above-noted online published documents at Scribd and Docstoc) began developing and presenting its plans to the FCC and publicly since approximately year 2001. The core elements have not changed, which is to use their 200 MHz (AMTS and 220-222 MHz) and 900 MHz (first, M-LMS, then latter adding MAS and Part 22 900 MHz) for nationwide advanced wireless for Intelligent Transportation Systems ("ITS") and compatible "intelligent" or "smart" energy-grid systems, environmental monitoring and protection, and emergency response, with the core services (for safety and efficiency of these systems and purposes) at no cost to government and the general public. Petitioners operate on the principal that business should first be in the public interest and achieve that, and then make a fair profit. All profits made in all Petitioners have been, to date (for over 10 years when they began) reinvested in this described plan and on this principal.

In early 2007, the LLCs Petitioners created and capitalized (including with FCC license donations) Skybridge to advance these plans. *Skybridge is unique in the nation as a nonprofit with major nationwide FCC-license spectrum holdings, and, with its supporting other Petitioners, unique in the above noted plans and principle.*[10]

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[8] For redundancy (and since Scrib has had problems with relaying some uploaded documents to search engines that it has not resolved fully), Skybridge recently began publication using Docstoc as well as Sribd. See:

http://www.docstoc.com/profile/warrenhavens01

[9] Under applicable State and IRS law, and guidance from nonprofit-law tax counsel, that is not permitted, and violations result in severe monetary sanctions or loss of tax-exempt status.

[10] The nation's radio spectrum is meant to serve first and foremost the public interest and only secondarily private-party profit. FCC government licensees directly serve, or should, the public interest. Most FCC commercial private-entity licensees do not first and foremost serve the public interest, when that is achieved, it is by "the private markets" in operation, to the degree those are fair, lawful and efficient. *What is missing in FCC licensing and wireless business is the US "third sector," the nonprofit private sector. That sector needs to be more active in support of government for public interest wireless including of nationwide scope. Skybridge and its supporting LLCs are doing that, and encourage others to do the same:* nonprofits do not "compete" with each other to serve government and the pubic, but cooperate for the common goals.

Skybridge, including its plans and relations with these other Petitioners, is subject under applicable law to audit by Attorneys General of the States in which it is domiciled and operates (in addition audits by the IRS and State tax authorities), and is also happy to provide any level of detail to other governmental entities with whom it interacts, including the FCC (for any reasonable purpose). Unlike most private businesses, a nonprofit acting in support of government and its public-benefit programs seeks to be public in programs. This is reflected in the Skybridge Scrib and Docstoc links above.

Petitioners planned and executed obtaining this spectrum collection for over a decade, and implemented it when the suitable auctions arose. Skybrige, a nonprofit, by structure and law has no owners and no private-party beneficiaries: its sole purpose stated to and approved by the IRS is to serve at no cost, or on non-profit basis, US governmental entities (Federal, State and local) and their purposes described in their laws and programs for more safe and secure transportation, energy, environment and emergency systems. The other Petitioners, private commercial LLCs, do not have public, venture capital or other financing or owners that create demand for short- or medium- term profit or stock-price performance and thus are able to pursue, with Skybridge, the long-term plans and executions described herein in the public interest.

In 2010, Petitioners (including Skybridge) bought certain 35, 43 and 900 MHz Part 22 licenses in Auction 87 to advance these plans: the 900 MHz for (as rules permit) especially high-power one-way transmission of N-RTK correction data to advanced GPS devices, including in RF-difficult urban areas, for high accuracy location (needed for ITS, rescue and other critical purposes), and the 35 and 43 MHz for nationwide Meteor Burst Communications ("MBC")[11] (which only operates well in 30-50 MHz) also to deliver said N-RTK corrections for high accuracy location nationwide, even in the most remote areas, at very low cost and with quick coverage possible (it will take only 5-10 master stations to cover the nation: the US Department of Agriculture already covers most all of the nation with four master stations for its SNOTEL and SCAN systems using MBC). MBC is the only means to achieve truly ubiquitous coverage in the nation (and far offshore for maritime)[12] of low-data-rate but highly secure, redundant and

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[11] MBC wireless links (from a master station to a remote fixed or mobile transceiver station) *span up to about 2,000 km per link*: the maximum being limited mostly by the curvature of the Earth in relation to the height above the earth of the atmospheric band in which the "meteor bursts" take place. These "bursts" are coherent ionized field created by the vaporization of the constant stream of very small meteors, billions a day over the US, entering the atmosphere: these re-radiate or reflect radio transmissions in the 30-50 MHz range back to Earth (lower frequencies have too much interference and higher ones are not sufficiently re-radiated or reflected back to Earth). With enough base stations and enough channels at each—as Petitioners plan (with spectrum already secured in Auction 87)— a MBC network can approach close to real-time data, and in any case is highly predictable and secure. It is more secure than other forms of wireless and wireline communication for well-know reasons described in Skybridge's Scribd link given above. Petitioners' MBC plans are guided by leading MBC experts in the US, including Dr. Robert Mawrey, Dr. Robert Desourdis, and other wireless experts. (Petitioners have built up substantial expertise in MBC internally, as well.)

[12] See footnote 11 above regarding range. One MBC maritime application (with comments added by Skybridge- SkyTel) is described here (there are many others):

cost-effective coverage: this more critical as "broadband" for many forms of wireless that are critical for "intelligent" transportation, energy, environment and emergency systems. MBC will also can provide a redundant backup up of, and certain augmentation of, GPS due to this ubiquitous coverage, the sub-nanosecond time transfer and synchronization it enables, delivery of N-RTK corrections, etc. [13] MBC will also provide the most secure and resilient (in man-made or natural wide-area emergencies) means of basic communications. All of these MBC assertions are documented by expert analysis in the Skybridge Scribd link given above, in the Collection on Meteor Burst Communications, as well as in hundreds of other publications by experts.

Skybridge and the other Petitioners (called "SkyTel" for short on Scrib and in other public contexts) have the only spectrum and plan that, upon an objective look at established non-controversial technical and economic expert showings, can provide nationwide ubiquitous backup standby communication, location, and precise-timing services in case of major disasters practically and cost effectively: The network an services will be internally cost effective, and to government entities and critical infrastructure operators provided at no cost or on cost basis. It is also non controversial that apart form terrestrial-origin natural and manmade disasters, larger space-weather events—major solar flares—have the potential to cause far greater and longer lasting disasters. SkyTel's nationwide meteor burst communications in the 35-43 MHz range, linked with mobile ad hoc mesh networks using SkyTel's 200 and 900 MHz, can provide the needed back up communications, location, and precise timing: this will be provided at no cost, or at cost. See, e.g.,

http://www.scribd.com/doc/48737836/Meteor-Burst-Communication-Essential-in-Major-Solar-Flare-Take-Downs-of-Communication-and-Power-Systems

http://www.scribd.com/doc/48737874/DHS-National-Infrastructure-Protection-Plan-note-on-defect-for-lack-of-dedicated-wireless

These matters are, unfortunately, outside of the common discussion in the private radio community, including before the FCC.

Petitioners' AMTS 200 MHz is a critical component of this disaster-backup wireless, also: it will provide the principal spectrum for coverage between the Meteor Burst relay stations and vehicles, persons and other moving things.

In 2009 and 2010, with University researchers, Petitioner set up and funded a research program at the University of California in nationwide ubiquitous cooperative high accuracy

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http://www.scribd.com/doc/43725345/Meteor-Burst-Comm-for-Global-Shipping-Container-Tracking-Globaltrak-Patent-2007.

[13] Accurate and reliable GPS for location and timing is increasingly essential to the nation's wireless, energy, financial, security, emergency response and other systems, but it is not very accurate in urban areas and some rural rugged-terrain areas, due to satellite blockage and RF multipath. Augmentation is needed in those areas. GPS can also easily be jammed, and may be knocked out by hostile forces, or especially severe solar Coronal Mass Ejections. Augmentation with wireless-delivered N-RTK is one of the solutions for especially high accuracy needed for critical ITS and other purposes, and an independent location system to GPS is needed to back up GPS in case it is jammed or knocked out (which can also provide augmentation).

location ("C-HALO") which included a cost-benefit study reflected here:

http://www.scribd.com/doc/37796067/Nationwide-Cooperative-High-Accuracy-Location-C-HALO-Infrastructure-Cost-Benefit-Study-Aug-2010-Interim-Report-UC-Berkeley-Institute-of-Transport

The final report will be published in early 2011: based on pre-publication summaries given to Petitioners: "…including all types of accidents (fatal and non-fatal), the [annual] benefits are estimated to be: $160-$320Billion: 1.1-2.3% GDP." This is solely for core ITS safety and flow-efficiency, and does not include what appear to be (bases on published studies for other nation's planned C-HALO, including Australia) equal or greater benefits to the non-ITS domains that use or need high accuracy location. The total benefits will made C-HALO one of the principal "infrastructures" in the nation (in any nation).

C-HALO and services it enables can only build upon a proper radio-spectrum base. Ideal for this is the spectrum of Petitioners, of which AMTS is critical: (i) The 35 and 43 MHz of Petitioners is for the noted fully ubiquitous (but low data rate: only N-RTK and select limited security and emergency information can be accommodated) MBC, *(ii) the AMTS (and certain adjacent 220 MHz Petitioners hold) of Petitioners is clearly needed for the majority of the two-way and one-way communications to vehicle and other things employing C-HALO: for coverage of the nations land and maritime transportation routes for the constant data transmissions needed*, and (iii) the 900 MHz of Petitioners (6-7 MHz total in most all parts of the nation) is needed for the highest-traffic areas (cities and some special rural industry and resorts), and for certain terrestrial "multilateration" location to augment GPS (to help resolve the problems noted above in footnote 13.

For vehicle-based radios (that have ample room and power supply), Software Defined Radio ("SDR") and Cognitive Radio ("CR") techniques, using all these bands, an various protocols, will greatly facilitate and increase spectrum efficiencies, capacities and performance.[14]

This is the best collection of spectrum for the above-noted critical purposes in frequency ranges and quantities. *We challenge anyone to show otherwise, in public published debate. We say that since most opponents or doubters have little real interest or knowledge of these areas and instead use simplistic views and jargon to suggest things that do not stand up to scrutiny, for*

[14] SDR and CR as just described are substantially advanced and proven in more-recent military wireless, but is only solely being considered by the US professional mobile radio ("PMR") market, including since few in that market have the "greenfield" spectrum to consider major new systems that could justify a move to SDR and CR (long term far better and more spectrum- and cost- efficient, but short term more expensive), and also since that market is *not* forward looking and acting in general, but is lead ("around by the nose") by the dominant equipment vendors, and those with close ties, that do not try for advances they cannot make easy money on, and other reasons far short of good engineering and execution in the public interest (that this PMR market is meant to serve). Petitioners are not part of that constrained PMR market. There is more technical capability in kids toys these days than in most all US PMR radio systems and terminals and that is absurd and damaging.

purposes that, at best, are not in the public interest.

AMTS, as explained above, is a rare spectrum band, needed for the above-noted purposes including since it: (i) is in a frequency range that provides the RF propagation needed (long range and good in high-fading mobile environment) (above 400 MHz is not nearly as good, and 225-400 is all US DOD spectrum); (ii) has an ample amount of spectrum for the data capacity needed; and (iii) is in block spectrum (not non-adjacent narrow channels) to allow more-advanced technologies than traditional narrowband FDMA, such as certain wider-band OFDM-based technologies (some that are now, and other that will become, available in this range)—all three of which are needed for noted critical purposes that focus on land[15] and maritime ITS transportation.

AMTS should not be wasted on fixed-wireless, since that can use higher frequencies (even above 1 GHz) due to the far more RF friendly paths that can be achieved, vs mobile-communication paths in adverse environments, and since fixed wireless can also use higher power more easily then mobile transceivers. AMTS is a Part 80 maritime band, which is a transportation service. That can and should be extended to land transportation as Petitioners are doing. Transportation traffic peaks in rush hour, when uses for fixed-wireless is relative low, and vice versa. Also, transportation use focuses signal along the major roadways, and generally away from areas of most use for fixed-wireless. This time and space separation allows synergistic support of critical fixed wireless services, along with the primary transportation services, using the same spectrum including AMTS (and to a large degree, the same wireless networks): however, the more difficult and critical transportation services should be the focus, as Petitioners are doing.

Transportation is more critical then the other noted services since it involves, to a far greater degree, safety of life and property, and without the noted C-HALO and the real ITS that can only result from its implementation (spacing of vehicles along and across roadways for flow efficiency, warning of impeding crashes or lane departures, etc.) the nation will continue producing far too much pollution and using far too much fuel (of any kind).

In sum: AMTS is a critical transportation radio band and should remain so: both maritime and land. It should not be hoarded and blocked from the above purposes unlawfully, as PSI and MCLM are doing.

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[15] Use of some modest amount of 217-222 MHz for railroad PTC is reasonable, but (1) PTC is not reasonable *as a stand-alone application* to justify new wireless for railroads (including by use of tax-payer "stimulus" or other funds): that is the conclusion, shown in detail, of objective experts, (2) the PTC signaling itself will use only a modest amount of wireless data, (3) railroads already have VHF high-band and 900 MHz that is not used well including with more advanced spectrum-efficient equipment, and (4) railroad are very major entities that have ample financial and planning resources to plan for and bid in future auctions to buy spectrum they need (if indeed they need more)—BUT the US public land and maritime transportation markets cannot plan and go into auctions: the vast majority of persons using road vehicles and boats, and even most government and private fleet operators: That, combined, is a far larger transportation activity than railroads.

For the reasons given in this Appendix above, the foregoing was presented as relevant to this Petition for Forbearance.

[End of Appendix.]

Certificate of Service

I, Warren C. Havens, certify that I have, on this 11h day of March 2011, caused to be served by placing into the USPS mail system with first-class postage affixed a true copy of the foregoing *"Petition for Reconsideration and Motion to Dismiss,"* to the below-listed parties[16]

Copies served by email, indicated below, are for convenience. (Petitioners attempt, on their side, to expedite FCC proceedings they are involved with by said complimentary email service.)

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[16] Said delivery to the US Postal Service may be after business hours, and if so, the postmark will be the following business day.

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